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Human rights: toward a  
common understanding



## HUMAN RIGHTS: TOWARD A COMMON UNDERSTANDING

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## HUMAN RIGHTS: TOWARD A COMMON UNDERSTANDING

With increased globalization and the need to invest in new markets, concerns have been raised about human rights abuses in some countries with emerging economies, in particular in the Asia-Pacific region. Some suggest that western notions of human rights cannot realistically be applied to different cultures, while others suggest that western governments need to be more forceful in their insistence on human rights guarantees before doing business abroad. The following paper explores this debate.

In recent years we have heard much talk about the “new world order.” While speculations about what this order may come to entail have become increasingly pragmatic, there remains a general consensus that nations are now afforded opportunities not previously open to them. Those in the former Soviet bloc still await significant advances in economic prosperity and political liberties. Others will want their governments to focus on matters of economic and social renewal in order better to cope with the demands of globalization. For some, the new world order may entail little more than small advances in overcoming generations of destitution and discrimination.

If nothing else, the end of the Cold War has made possible a degree of optimism about the future of inter-state relations and our respective publics. And, although the United Nations has not proven a panacea for mediating conflict, it has developed a wide-ranging body of “understandings” to which we can turn for guidance and standards. Ideological super-power rivalry no longer structures the world order and the pursuit of “rights” and “justice” need no longer be sacrificed on the altar of bloc interests.

In an increasingly interdependent world, nations will not be afforded the luxury of judging themselves. Their actions and progress in matters of human rights will be judged by the court of international public opinion, non-governmental organizations, and those standards which, through the United Nations, we have come to regard as representing the norms of civilized behaviour. Relevant milestones that come to mind include:

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- The Universal Declaration of Human Rights (1948)
- The International Convention on the Elimination of All Forms of Racial Discrimination (1969)
- The Convention on the Elimination of All Forms of Discrimination against Women (1981)
- The Convention on the Rights of the Child (1989)
- The Vienna World Conference on Human Rights (1993)
- The Fourth World Conference on Women (Beijing 1995)
- The World Summit For Social Development (1995)

Cynics, of course, argue that such agreements, although noble in intent, are impossible to enforce. The criticism does not require debate, it is obvious. Even so, it is important to note that these declarations and conventions have come to form an identifiable body of international standards on the proper conduct of relations between governments and citizens. Over time, declarations of intent have crystallized into elements of customary international law.

There are also those who argue that the human rights principles, set forth in UN documents and initiatives, represent "western" values and cannot readily be applied to non-western cultures. Thus, Asian commentators focus on the uniqueness of Asian values and emphasize the differences which, in their view, do not permit the application to their culture of moral standards that originated in the West. Sometimes the argument is presented in terms of *collective* as opposed to *individual* rights; with the former assumed to be more characteristic of Asian cultures. The distinction is not new, however; human rights discourse has long differentiated between two classes of rights:

- traditional civil and political rights, and
- economic and social rights.

The first emerged from the early struggles for individual freedom and democratic government. Rights sought are, *inter alia*, the extension of the franchise, the rule

of law, and the freedom of speech and assembly. The second (collective rights) arose from attempts by organized labour and citizen groups to alleviate the excesses of laissez-faire capitalism. Concerns focused on improving the overall quality of life for all citizens. Rights pursued included the right of labour to organize and bargain freely, universal access to education, access to medical care and social programs, and the right to work.

While the two traditions can be distinguished, collective rights are in no sense meant to stand in opposition to, or supersede, individual rights; the two are complementary. In fact, collective rights help to make the realization of individual rights more possible. Thus, a well educated public will be more inclined to participate in, and recognize the value of, democratic politics. Citizens with access to decent social services will be better able to cope with economic change and have a more positive view of their society and its institutions. An educated and "secure" public will be less inclined to tolerate injustices against others.

The Bangkok Declaration of 1993 reaffirmed the "right to development" as a universal and inalienable right. In so doing, signatories recognized poverty as "...one of the major obstacles hindering the full enjoyment of human rights." Development is seen as a necessary precondition for the evolution and enhancement of individual rights and freedoms. Again, collective and individual rights are complementary; the latter can have little meaning for people living at a subsistence level. The collective "right to development" can, however, never be used as an excuse for states to forestall the granting of individual political and civil rights. Individual rights will be better realized, and more enthusiastically pursued, by a public optimistic about its future but they should never be sacrificed on the pretext that a certain level of economic development must be attained before individual rights can be granted.

If we can agree that the notion of collective rights should never be used as justification for the denial of individual rights, then a similar claim might be made with regard to the notion of sovereignty. All too often, governments have claimed immunity from their abrogation of human rights by appealing to the international law principle that forbids intervention in the *internal affairs* of a recognized state. While not suggesting the abandonment of this principle, it is today possible to argue that international law protects the sovereign people, rather than the government that rules them.

For precedent we can look to the United Nations resolutions and sanctions against South Africa, which were based on the proposition that that country's legal system of race relations was a "threat to peace." As a consequence, UN action established the principle that domestic policy has implications for international security. Similarly, the Organization for Security and Cooperation in Europe (OSCE) wrote human rights into an international agreement, guaranteeing them a place on the agenda of European regional security. Such understandings have implications both for those who would defend human rights, and for regimes that flout them.<sup>(1)</sup>

Today, "security" is understood as meaning more than merely military security or the security of borders, as was traditionally the case. It is now possible to speak meaningfully of cooperative security, which includes not only military, but social and economic precepts as well. The belief is that, while confidence-building measures on the military side are essential, a variety of non-traditional security threats also need to be addressed. Many of these, like environmental decay and resource management, have transboundary implications. Therefore, true security is multifaceted and can be achieved only if nations take into account the importance of socio-economic, environmental and human rights concerns. Security that sacrifices individual human rights is not real security. Long-term stability cannot be achieved by strategies that alienate and dehumanize segments of a nation's citizenry. Ultimately, states are responsible for the dangers they pose to their own citizens.

To those who argue that the international human rights tradition is simply an attempt by the West to impose "its" hegemonic value system on others, one might simply note that:

- there is no such thing as "the" Western values that would neatly define human practice in countries from the Urals to the Rocky Mountains. The "West" too is not a monolithic entity but embraces a variety of value-laden cultures and traditions;
- the values most often mentioned by Asian leaders such as "hard work, family, education, savings, and disciplined living" are certainly not alien in the Western tradition;

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(1) *Strategic Survey 1993 - 1994*, The International Institute For Strategic Studies, 1994, p. 38.

- people continue to argue, to make judgments, take sides and criticize individuals and even whole traditions if they seem in conflict with their own perceptions. By pointing out their views to the other party they implicitly presuppose and affirm a common ground for meaningful human interaction. At the practical level, people do not seem inclined to abandon the idea of searching for standards of morality and rationality that obtain across cultures. In all their differences, cultures still share, and always will, the common denominator of being human.<sup>(2)</sup>

In a real sense, all values are culturally sensitive in that they are "contextually defined and dependent on an over-arching network of socio-cultural relationships which provides meaning and significance." But we also know, if only intuitively, that moral choices are, above all, "about what is good in itself, objectively, and for all people. There are moral rights and duties which obtain independently of race or culture, tradition or form of government." These rights and duties, in terms of practice and action, define human beings as human beings, not as citizens of this or that society.<sup>(3)</sup>

There will always be a tension between "universalist ethics" and local customs and beliefs. The tension is inevitable, and, in the long run, we will be better served if we view it as positive. Custom will always be subject to the critique of universalist ethics -- in our context, the international human rights tradition. However, universal precept devoid of the appreciation of long-held custom and its beliefs stands in danger of elevating itself to the level of idle, if not self-serving, abstraction.

Human rights are on the international political agenda -- and they are there to stay. Today, it is no longer possible to speak of world order without taking into account the protection of human rights and the remedy of human wrongs. But those who wish to do the right thing must remember that, for much of humanity, the available choices are not among competing goods, but, among differing degrees of misery - the irony being that even choices among the latter may have salutary effect.

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(2) Gerhold K. Becker, "Asian and Western Ethics: Some Remarks on a Productive Tension," *Eubios Journal of Asian and International Bioethics*, No. 5, 1995, p. 33.

(3) *Ibid.*, p. 31.

## SPECIFIC PROBLEMS

### A. Status of Women

In recent years, we have seen an increased focus on the human rights of women and the advancement of their status. Much remains to be done. The Beijing Declaration and Platform for Action committed governments to take specific steps to end violence against women, called upon the United Nations to integrate women into decision-making, urged an end to harmful traditional practices such as female genital mutilation, and dealt with issues of gender discrimination.<sup>(4)</sup>

The Beijing Conference drew attention to the political, civil, and legal rights of women, who continue to be significantly under-represented in most of the world's political institutions. Women in many countries are subjected to discriminatory restrictions on their fundamental freedoms regarding voting, marriage, travel, property ownership, inheritance practices, custody of children, citizenship and court testimony. Women also face discrimination in access to education, employment, health care, and financial services including credit. Other longstanding violations of women's rights include domestic violence, sexual abuse, harassment, and exploitation and trafficking.<sup>(5)</sup>

Women's social and political rights, where they do exist, were not easily won. Indeed, with regard to the equal participation of women in political and socio-economic institutions, there is still room for much improvement, even in the so-called developed nations. Spousal abuse, sexual harassment and wage discrimination are problems faced by women everywhere. It is imperative that governments live up to their international commitments with respect to women's human rights and that the all important work of NGOs in this regard be supported. Increasingly, women are becoming active participants in these forums, finding not only common cause but an all important vehicle for collective self-expression.

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(4) *Overview Of Human Rights Practices, 1995*, U.S. Department of State, March 1996.

(5) *Ibid.*

## B. Child Labour and Child Prostitution

The International Labour Organization (ILO) estimates that, worldwide, there are more than 250 million child workers between the ages of five and fourteen. According to the ILO, the exploitation of children in dangerous industrial employment and the sex trade is growing. Estimates suggest that 61% of child workers, nearly 153 million, are in Asia; 32% or 80 million are in Africa, where the highest proportion of children working can be found; and 18 million live in Latin America.<sup>(6)</sup>

The harsh, and often inhuman, working conditions in which these children find themselves are well documented and need not be repeated here. The question for policy-makers is "what can realistically be done to put an end to child labour and exploitation?" Brief reflection suggests that the issue is complex and that it will take years, if not generations, before it is solved.

In essence, child labour is both a moral and a structural problem: moral in that the exploitation of the weak -- especially if they are children -- can never be justified; structural in that the factors that impinge on child labour are multi-faceted and are not within the purview of any one single power -- government or organization -- to deal with. Children forced to work find themselves subject to pressure from a variety of sources:

- local poverty and custom;
- exploitation by adults -- parents, employers, government officials;
- the interests of multi-national corporations looking to increase profit by relocating to areas of cheap labour;
- the globalization of international economic relations.

It comes as no revelation that patterns of child labour are principally determined by poverty. In some situations matters are further compounded by the belief that bonded labour is a natural and inescapable part of reality; it has always been part of coping with the miseries of life on the margins and will continue to be so. If child labour is deemed to be part

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(6) *Guardian Weekly*, 17 November 1996.

of the "natural order" of things, then the determination to fight it will be difficult to come by. Such belief continues to foster resignation on the part of those unfortunates who know no better, and cynical exploitation on the part of some who do.

For many children caught in the never-ending cycle of poverty, the only available choice may be to accept the conditions of exploitative labour or to fall prey to prostitution. Again, real life choices are not always made from among competing goods. If the options are to work for \$2 a day stitching soccer balls for a subcontractor to a multinational corporation, being forced into prostitution, or starvation, then the first would likely prove preferable.<sup>(7)</sup>

The attendant social dislocations brought on by severe poverty are profound and their solution cannot be found within the range of opportunities open to the individual. Both the correct statement of the problem and the range of possible solutions require us to consider the economic and political institutions of the society, and not merely the personal situation and character of a scatter of individuals. To be politically effective, and thereby tend to its needs, a citizenry must be able to turn its personal troubles into social issues. They must come to understand that these latter are not capable of solution by any one individual but only by modifications of the structure of the groups in which they live and sometimes the structure of the entire society.

A sense of powerlessness breeds not only despair but also cynicism. Of the two, the latter proves more destructive, for cynicism propagates a self-validating picture of reality. If people are told often enough that their "milieu" is their natural fate they will become accustomed to it and accept it. In the end they will have little to console them save the despair of inevitability.

Solutions to the problem of child labour will require the active involvement of governments, non-governmental organizations (NGOs), both national and multinational economic interests, and local communities. Governments need, at least, to ensure that laws regulating working children are enforced. Mere survival will sometimes dictate that children

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(7) John Stackhouse, "Youngsters Paid \$1 for Making \$50 Balls," *Globe and Mail* (Toronto), 20 November 1996.

work to help supplement family income. Such work should not go unregulated, however, and to have laws without appropriate enforcement mechanisms is simply to turn a blind eye.

Economic interests dictate that communities welcome investment by multinational corporations. While there is an obvious commonality of interest in these relationships, there are also attendant responsibilities. It is not unreasonable to suggest that corporations should play a role in trying to ensure "decent" working conditions among those producing their goods. This is not an easy task. Work contracted to local firms may often be sub-contracted to a variety of smaller producers at the village level. The question then becomes how much direct involvement can be expected from corporations in policing or monitoring local producers? Are they the agencies best suited for the task?

Ultimately, it is the national and local governments of the host countries that are responsible for putting in place appropriate laws and enforcement mechanisms. This is a responsibility some governments are willing to abrogate, either from lack of interest or because economic exigency dictates that they do whatever is required to generate development and employment. Resources and reality limit the good intentions of government, just as they do those of individuals.

A case can certainly be made for the adoption of voluntary codes of conduct by corporations. NIKE Inc., for example, signs a memorandum of understanding (MOU) with every factory that produces NIKE shoes. The agreement stipulates that subcontractors and suppliers must certify compliance with all applicable local government regulations regarding minimum wage, overtime, child labour laws, mandatory retirement benefits, etc. As well, those sourcing for the corporation must agree not to use forced labour, to keep on file such documentation as may be needed to demonstrate compliance with the MOU, and to make such documents available for NIKE's inspectors upon request.<sup>(8)</sup>

Such codes have certain advantages. They provide policy direction to employees of the corporation in all spheres of operation and set out in clear terms, for foreign affiliates and others, the standards by which a company is willing to do business. Thus, in 1992 Sears, Roebuck and Co. announced that it had adopted a formal policy to ensure that its imports from the People's Republic of China (PRC) did not include products made by prison

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(8) "The Global Sweatshop," *Far Eastern Economic Review*, 9 September 1996, p. 5.

labour. The policy requires all contracts that Sears signs for the import of products emanating from the PRC to include a clause stating that none of the goods subject to the contract have been manufactured by convict labour. The policy also asserts that "Sears employees may from time to time conduct unannounced inspections of manufacturing sites in mainland China to determine compliance with U.S. law as regards the use of forced or convict labour." Further, the policy requires Sears to maintain lists of its Chinese suppliers' production sites which can be compared with a list (also compiled by Sears) of the addresses of sites of forced labour in the PRC.<sup>(9)</sup>

Other corporations have adopted similar guidelines, thereby demonstrating that, where there is goodwill and a desire to do the right thing, international human rights law can provide a sound standard against which to measure business practice. Coupled with consumer awareness of the conditions under which production takes place, such self-imposed guidelines might prove quite effective. Consumers can be urged to take considerations other than price into account when making purchases.

If there is one group whose work will continue to be invaluable in dealing with the exploitation of children, it is the community of non-governmental organizations. By continuing their research and networking, NGOs can do much to increase the *transparency* of human rights abuses. It is they who are best placed to be the conscience of, not only national governments, but the international community as a whole. The pro-active work of these groups needs continued support and it is imperative that national governments not be permitted to stifle them. The grass roots work of NGOs is irreplaceable, not only because it is effective, but also because it is the strongest proof of the universality of human rights. Precisely because NGOs are deeply rooted in local societies and cultures and spring from their own communities, their work has an undeniable authenticity and legitimacy.

The exploitation of humans by one another, whether as groups or individuals, is something people of conscience have long fought. Most would say that significant progress has been made; however, when trying to come to terms with the current problems of child sex abuse one cannot but wonder how thin the veneer of civilized behaviour really is. Perpetrators are not always what one would define as criminal elements; increasingly they are middle class

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(9) Diane F. Orentlicher and Timothy A. Gelatt, "Public Law, Private Actors: The Impact of Human Rights on Business Investors in China", *Northwestern Journal of International Law and Business*, Vol. 14, No. 1, Fall 1993, p. 107.

burghers on vacation seeking excitement or a form of perverse gratification only Freud could hope to understand.

If estimates on child prostitution are near correct, they are horrifying. What is more, no part of the world is immune. There are 70,000 child prostitutes in Zambia, 200,000 in Thailand, 40,000 in Venezuela, 25,000 in the Dominican Republic, and 500,000 in India. In America, between 100,000 and 300,000 children are sexually exploited through prostitution and pornography. In eastern Europe the situation is grim: even Estonia, with a population a quarter the size that of the city of London, employs 1,500 minors, some as young as 10, in its sex industry.<sup>(10)</sup>

The exact nature of exploitation differs from one country to another. In Asia, for example, commercial sexual exploitation of children is typically so-called "sex tourism" or takes a form in which local men use the services of child prostitutes. Children may be sold into the sex trade by families or friends, sometimes knowingly, sometimes in the mistaken belief that the children will become domestic servants or otherwise earn money for the family. Sometimes the children are kidnapped, trafficked across borders or from rural to urban areas, and moved from place to place so that they effectively "disappear."<sup>(11)</sup>

In Europe, children are trafficked across the borders of mainland Europe from poorer countries in the East to wealthier countries where the market for children is fuelled by organized paedophile rings and high-tech information services. There has also been an increase in consumer-driven child prostitution, where out-of-control consumerism and the pressure of advertising and expectations push children into the sex trade in order to buy high-cost consumer items or drugs. This phenomenon also exists in Canada, The United States, Australia, and the United Kingdom.<sup>(12)</sup>

In South America, information has come principally from people working with children who have already been forced to earn a living on the streets and who may ultimately either choose or be forced to enter the sex trade. Because of the precariousness of their situation, they are vulnerable to pimps and other criminal elements who exploit them for profit and offer them "protection" which masks abuse, often violence and, too often, drug-

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(10) John Henley, *World Congress Addresses Spiralling Child Sex Abuse*, *Guardian Weekly*, 8 September 1996.

(11) World Congress Against Commercial Sexual Exploitation of Children, *Overview*, 1996.

(12) *Ibid.*

dependency. Sometimes, however, these children enter the sex trade "voluntarily," seeking to earn more from sex than they can from other forms of street labour, in order to finance a drug habit, purchase consumer goods otherwise out of their reach, or simply to be able to eat.<sup>(13)</sup>

The underlying causes of such exploitation are numerous, including economic deprivation, large-scale migration and urbanization, family disintegration, crude consumerism and cultural values that continue to discriminate against girls and women. Especially disconcerting is the fact that "clients" travel across continents for the explicit purpose of child sex. Developed sex tour industries have been documented in the Philippines, Cambodia and Thailand. More recently, sex tours from North America to Brazil and the Dominican Republic have increased and it is believed they are also on the increase in eastern Europe.<sup>(14)</sup>

As with child labour, dealing with the problem of child sex tourism is no easy matter. Tour companies have accepted some responsibility and are beginning to educate their clients. The German charter airline Condor shows passengers travelling to Sri Lanka a film that includes a segment on the wretched lives of the "beach boys," who are often the target of foreign paedophiles. Certain tour companies are also committed to cancelling contracts with hotels that allow child prostitution on their premises. Australia has led the way in extra-territorial legislation that allows its nationals to be prosecuted at home for sex crimes against children committed abroad. Canada has similar legislation before its Parliament.<sup>(15)</sup>

These are positive steps, but more is needed. More will need to be done in terms of education and policing. Aid and development projects must be promoted at national and local levels to help alleviate the abject poverty that often forces parents and children to make what would otherwise be unacceptable choices.

Solutions to the problems here considered will not transpire overnight, they will proceed incrementally and frustration will prove the one constant. But if we can come to recognize the legitimacy of international human rights, at least as a standard against which actions can be measured, then there is also hope.

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(13) *Ibid.*

(14) *Ibid.*

(15) Henley (1996).





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